

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION**

WYMAN GORDON PENNSYLVANIA, LLC	:	
	:	
	:	
AND	:	CASES 04-CA-182126,
	:	04-CA-186281, and
UNITED STEEL, PAPER AND FORESTRY,	:	04-CA-188990
RUBBER, MANUFACTURING, ENERGY,	:	
ALLIED-INDUSTRIAL AND SERVICE	:	
WORKERS INTERNATIONAL UNION,	:	
AFL-CIO/CLC	:	
	:	

**RESPONDENT'S MOTION TO STRIKE
WITHDRAWAL OF RECOGNITION ALLEGATIONS IN THE COMPLAINT**

I. INTRODUCTION

Pursuant to § 102.24 of the National Labor Relations Board's ("Board") Rules and Regulations, Respondent Wyman Gordon Pennsylvania, LLC ("Respondent" or "Wyman Gordon"), by and through its undersigned counsel, hereby files this Motion to Strike the Withdrawal of Recognition Allegations in the Complaint ("Motion").

On September 29, 2017, the Regional Director issued the Complaint in this matter. Pursuant to Section 102.24 of the Board's Rules and Regulations, Wyman Gordon filed a Motion for a Bill of Particulars on October 13, 2017. Specifically, Wyman-Gordon explained that the Complaint contains only three cursory allegations regarding the withdrawal of recognition. The Complaint, via ¶ 14, alleges only: (1) Respondent engaged in the conduct previously described in the Complaint and without having remedied such conduct; (2) Respondent withdrew recognition of the Union on November 29, 2016 without an election conducted by the Board; and (3) a legal conclusion that Respondent therefore failed and refused to bargain collectively with the Union.

In its Motion for a Bill of Particulars, Wyman Gordon further explained that the Regional Director's conclusory and disjointed allegations provided insufficient notice to Wyman Gordon of the factual and legal bases for the allegation that the withdrawal of recognition of the Union was in violation of the Act, thus depriving Wyman Gordon of its fundamental right to due process.

The Division of Judges agreed, and on October 20, 2017, the Deputy Chief Administrative Law Judge ("ALJ") issued an Order Granting in Part and Denying in Part¹ Respondent's Motion for a Bill of Particulars. Specifically, the ALJ ordered that it be specifically pled whether there is a contention that the employee petition for withdrawal of recognition was tainted by the unfair labor practices alleged elsewhere in the Complaint, and to plead any other reason for which the withdrawal of recognition was unlawful. *See* Order, attached as Exhibit A. The ALJ explicitly ordered the Complaint be amended to allege that the withdrawal of recognition was unlawful due to the causal relationship between the withdrawal and prior unfair labor practices, if that is the case. *See Id.* (emphasis added). To date, however, no amended complaint has been filed. Accordingly, Wyman Gordon respectfully requests that the withdrawal of recognition allegations be stricken from the Complaint.

II. LEGAL ANALYSIS

a. An Amended Complaint has Not Been Promptly Filed as Required.

Pursuant to Section 10292 of the NLRB Casehandling Manual, if a Motion for a Bill of Particulars is granted, "the Regional Office should promptly furnish the particulars." NLRB Casehandling Manual (Part Two) Compliance Sec. 11002.1(a) R. (emphasis added). Though "timely" is not defined by the Casehandling Manual, three months is significantly longer than time periods historically deemed timely. Board law suggests that between immediately and six weeks

¹ The Board denied Respondent's Motion related to its request that the General Counsel plead the evidence on which it contends the withdrawal of recognition was tainted.

is “prompt.” *See Textile Workers, Twua (Charles Weinstein Co.)*, 123 NLRB 590, 595 (1959) (“At the hearing, the Respondent orally requested a bill of particulars, which the General Counsel promptly submitted orally upon the record.”); *Truck Drivers Local 692*, 209 NLRB 446, 1–447 (1974) (noting that the General Counsel’s furnishing of specifics within six weeks was prompt).

Board law and processes further illustrate that striking allegations subject to an Order to provide particulars is appropriate when the party against whom the Order was issued fails to timely comply. *See Cent. Freight Lines, Inc.*, 133 NLRB 393, 440 (1961) (“At the reopening of the hearing on April 25, 1960, on the amended complaint in Case No. 16-CA-1326, the Trial Examiner granted Respondent's motion to strike paragraph 8 of the amended complaint containing allegations of Section 8(a)(1) of the Act, for General Counsel's failure to furnish a bill of particulars directed to that paragraph pursuant to the Trial Examiner's order of March 24, 1960.”); *Eclipse Moulded Prod. Co.*, 34 NLRB 785, 787 (1941) (“The Trial Examiner advised the Board's attorney that, unless a bill of particulars was furnished with respect to the allegations of the complaint that the respondent ‘by other acts and conduct’ had engaged in unfair labor practices, those allegations would be stricken. No bill of particulars was furnished by the Board's attorney, and the allegations in question were stricken from the complaint.”)

In this case, the Regional Office has not promptly provided an amended complaint pursuant to § 10292 and as ordered. To the contrary, three months have passed without so much as notice of an intent to do so. Such delinquency is certainly not the “prompt” action required by Board rules and regulations. Because the Regional Office has failed to comply with the Order, the allegations related thereto should be stricken.

b. Wyman Gordon is Significantly Prejudiced by the Failure to Amend.

An employer must be provided with the “meaningful notice...and...full and fair opportunity to litigate” that are the fundamental requirements of procedural due process. *Lamar Advertising of Hartford*, 343 NLRB 261, 266 (2004). As previously made clear in Wyman Gordon’s Motion for a Bill of Particulars, ultimately, the issue is whether additional information is needed for “adequate preparation” for trial. *Westinghouse Electric Corp.*, 224 NLRB 899, 900 (1976); *see also Walsh-Lumpkin Wholesale Drug Co.*, 129 NLRB 294, 295 (1960) (Respondent is entitled to be informed of “the nature of the violations charged, the manner by which Respondent engaged in unfair labor practices, and the approximate times and places at which such acts had been committed.”).

A hearing in this matter is currently scheduled for March 19, 2018. However, Wyman Gordon cannot fully prepare without being informed what, exactly, the Regional Director is averring related to withdrawal of recognition. Wyman Gordon remains without *any* information related to the Regional Director’s position as to whether the previously filed unfair labor practice charges at issue in the Complaint tainted the petition for withdrawal of recognition. If this is the Regional Director’s position, he must plead a causal connection between the alleged unfair labor practices and the subsequent unremedied expression of the employee disaffection with an incumbent union. *See Exhibit A; Williams Enterprises, Inc.*, 312 NLRB 937, 939 (1993) (emphasis added).

Wyman Gordon has been waiting three months for these particulars. Now, with only two months until the hearing, Respondent remains without the necessary—and ordered—information. The Regional Office’s failure to provide the factual basis of a critical element of one of the claims, despite being ordered to do so, deprives Wyman Gordon of the notice to which it is entitled, and

prevents it from meaningfully preparing its defenses for trial. In light of the prejudice to Wyman Gordon and the infringement on its due process rights as a result of the Regional Office's failure to comply with the ALJ's Order, and specifically to plead his position as to a causal connection in ¶ 14 of the Complaint, the allegations therein should be stricken.

WHEREFORE, Respondent respectfully requests that the Division of Judges strike the allegations in ¶ 14 of the Complaint related to withdrawal of recognition.

Respectfully submitted this 24th day of January, 2018.

Respectfully submitted,



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WYMAN GORDON PENNSYLVANIA, LLC

UNITED STEEL, PAPER AND FORESTRY,
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04-CA-186281, and
04-CA-188990

Pursuant to Section 102.24 of the *Board's Rules and Regulations*, I hereby certify that on the 24th day of January, 2018, I e-filed *Respondent's Motion to Strike Withdrawal of Recognition Allegations in Complaint* with the Panel of Judges, and served a copy of the foregoing document via e-mail and U.S. Mail to all parties in interest, as listed below:

Mr. Dennis P. Walsh
Regional Director
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Nathan Kilbert, Esquire
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EXHIBIT A

UNITED STATES OF AMERICA
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DIVISION OF JUDGES

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**ORDER GRANTING IN PART AND DENYING IN PART RESPONDENT'S MOTION
FOR A BILL OF PARTICULARS**

On October 13, 2017, Respondent moved for a bill of particulars in this case. The General Counsel filed an opposition.¹

The essence of Respondent's motion is that although the complaint alleges that it illegally withdrew recognition from the Charging Party Union on November 29, 2016, it does not specify the reasons for which withdrawal violates the Act. The complaint also alleges that Respondent committed a number of unfair labor practices prior to November 29, but does not state any facts linking the withdrawal of recognition to these unfair labor practices.

Respondent states in its Answer that it withdrew recognition per the demand of attorneys for the National Right to Work Foundation who provided sheets signed by a majority of bargaining unit employees.

Section 102.15 of the Board's Rules of Procedure provides:

After a charge has been filed, if it appears to the Regional Director that formal proceedings in respect thereto should be instituted, he shall issue and cause to be served on all the other parties a formal complaint in the name of the Board stating the unfair

¹ In the alternative Respondent seeks dismissal of the complaint. The motion to dismiss may be addressed by the Board.

labor practices and containing a notice of hearing before an administrative law judge at a place therein fixed and at a time not less than 14 days after the service of the complaint. The complaint shall contain: (a) a clear and concise statement of the facts upon which assertion of jurisdiction by the Board is predicated, and (b) a clear and concise description of the acts which are claimed to constitute unfair labor practices, including, where known, the approximate dates and places of such acts and the names of respondent's agents or other representatives by whom committed.

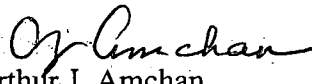
There is some ambiguity in the complaint. Although one could easily infer that the General Counsel contends that the employee petition on which Respondent relies is tainted by the unfair labor practices alleged elsewhere in the complaint, I order that he specifically so plead, if that is the case, and plead any other reason for which the withdrawal of recognition was unlawful.

On the other hand, the General Counsel is not required to plead the evidence on which he relies in contending that the withdrawal was tainted. Thus, I deny the motion in this regard.

Respondent's motion is granted insofar as I order the General Counsel to amend the complaint to allege that withdrawal of recognition was unlawful due to a causal relationship between the withdrawal and prior unfair labor practices, if that is the case. I also order the General Counsel to plead any other basis on which it contends that withdrawal of recognition was unlawful. I deny the motion insofar as Respondent seeks a pleading setting forth the evidence that supports the proposition that withdrawal was tainted by Respondent's unfair labor practices or other factors.

Dated: October 20, 2017

Washington, D.C.


Arthur J. Amchan
Deputy Chief Administrative Law Judge